IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revision No.790 of 2006

Dr.Jaswant Singh

.....PETITIONER

VERSUS

State of Punjab and another

.....RESPONDENTS

Crl.Misc.No.47115-M of 2003 (O&M)

Dr.Jaswant Singh

.....PETITIONER

VERSUS

State of Punjab

.....RESPONDENT

Crl.Misc.No.5507-M of 2005

Bal Krishan Sharma

.....PETITIONER

VERSUS

State of Punjab

.....RESPONDENT

Crl.Misc.No.16036-M of 2006

SI Kashmir Kaur

.....PETITIONER

VERSUS

State of Punjab

.....RESPONDENT

Crl.Misc.No.23571-M of 2006

Gurbax Lal

.....PETITIONER

VERSUS

State of Punjab

.....RESPONDENT

DATE OF DECISION: SEPTEMBER , 2006

CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr.P.S.Hundal Advocate and Mr.S.S.Rangi, Advocate,
for the petitioner in Crl.Revision No.790 of 2006
and Crl.Misc.No.47115-M of 2003.
Mr. H.S.Gill, Sr.Advocate
with Mr.Vivek Goel, Advocate,
for the petitioner in Crl.Misc.No.5507-M of 2005.
Mr.A.P.S.Deol, Advocate,
for the petitioner in Crl.Misc.No.16036-M of 2006.
Mr.S.P.S.Sidhu, Advocate,
for the petitioner in Crl.Misc.No.23571-M of 2006.
Mr.N.S.Gill, Asstt.Advocate General, Punjab.

..

JUDGMENT

This judgment shall dispose of Crl.Revision No.790 of 2006 and Crl.Misc.Nos.47115-M of 2003, 5507-M of 2005, 16036-M of 2006 and 23571-M of 2006. These petitions are arising from the orders passed by the Special Judge for taking cognizance of the offence while not agreeing with the untraced report/cancellation report submitted by the investigating agency. These orders are arising in two situations: firstly, where the investigating agency after considering the material collected during the investigation, came to the conclusion that there is sufficient material/evidence to proceed against the accused. So, the investigating agency applied for sanction for prosecution of the accused from the competent authority. However, the same was not granted and accordingly the untraced report was submitted; and secondly where during the investigation, the allegations in the FIR were found to be false, therefore, the investigating agency without applying for the requisite sanction from the competent authority submitted the cancellation report. Crl.Revision No.790 of 2006, Crl.Misc.Nos.47115-M of 2003, 5507-M of 2005 and 16036-M of 2006 are covered in the situation where the Special Judge, while not agreeing with the untraced report submitted by the investigating agency, took cognizance of the offence under Sections 190(1) of the Code of Criminal Procedure and summoned the accused to face trial. Crl.Misc.No. 23571-M of 2006 is covered in the situation where the Special Judge, while not agreeing with the cancellation report submitted by the investigating agency, took cognizance of the offence under Sections 190(1) of the Code of Criminal Procedure and summoned the accused to face trial.

2. In these petitions, a common question of law is involved, i.e.,

whether the Special Judge can take cognizance of the offence (pertaining to the Prevention of Corruption Act) under Section 190(1) of the Code of Criminal Procedure (hereinafter referred to as `the Code') even without there being a valid sanction granted by the competent authority while considering and not agreeing with the untraced or cancellation report submitted by the investigating agency.

3. To appreciate the aforesaid question, the facts have been taken from Crl.Revision No.790 of 2006.

4. In this petition, on a complaint made by one Veer Singh, the police registered a case under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as `the PC Act') against petitioner Dr.Jaswant Singh on the allegation that he had taken the bribe of Rs.7000/- for giving a wrong medico legal report. During the investigation, the police found sufficient material/evidence against the petitioner. Therefore, the investigating agency decided to submit the challan against him. In view of the said decision, the investigating agency applied for sanction for prosecution of the petitioner under Section 19 of the PC Act, but the appropriate authority refused to grant sanction for prosecution of the petitioner. Then the investigating agency prepared the untraced report and submitted it to the Special Court. The Special Judge vide order dated 10.2.2006 while disagreeing with the untraced report, came to the conclusion that prima-facie there is sufficient material/evidence against the accused for commission of the alleged offence under Sections 7 and 13(2) of the PC Act and has taken cognizance against the accused under Section 190(1)(b) of the Code irrespective of the fact there was no valid sanction for prosecution of the petitioner by the competent authority.

5. In the impugned orders, the Special Judge has given two-fold reasoning for taking cognizance of the alleged offence without there being valid sanction. Firstly, that when a cancellation or untraced report is presented before a Magistrate/Special Judge for his acceptance, three options are available to him:

(a) he may accept the report and drop the proceedings;

(b) he may disagree with the report and direct for further investigation in the case by the investigating agency; or

(c) he may disagree with the report and take cognizance of the offence himself by taking the view that there is sufficient ground, material or evidence for proceeding further against the accused, and issue process to the accused.

6. This power of taking cognizance of the offence has been conferred upon the Magistrate/Special Judge under Section 190(1) of the Code and the hand of the Court would not become tight for not taking cognizance only for want of sanction for prosecution. The Special Judge has no power to give specific direction to the investigating agency to obtain the sanction for prosecution of the accused, though the Special Judge can direct the investigating agency for further investigation of the case. The learned Judge has observed that in such situation, the Special Judge can take cognizance of the offence while disagreeing with the cancellation/untraced report. Secondly, the learned Special Judge took the view that there is a material difference between Section 6 of the Prevention of Corruption Act, 1947 (hereinafter referred to as `the Act of 1947) and Section 19 of the PC Act. In the PC Act, sub-sections(3) and (4) have been added which have materially diluted the bar of taking cognizance of the offence for want of sanction for prosecution. The learned Judge while relying upon a decision of the Supreme Court in State by Police Inspector Versus T.Venkatesh

Murthy, 2004(4) RCR 388 (SC) has observed that an accused under the PC Act cannot be discharged ipso-facto for want of sanction for prosecution under Section 19 of the PC Act until the Court comes to the conclusion that the absence, error, omission or irregularity in the sanction has resulted in a failure of justice. Against the aforesaid orders of taking cognizance of the offence under the PC Act without there being any valid sanction, these petitions have been filed by the petitioners.

7. Counsel for the petitioners contends that a valid sanction is *sine qua non* for taking cognizance of an offence under Sections 7,10,11,13 and 15 of the PC Act by the Special Court. Section 19 of the PC Act creates a complete bar on the powers of the Court to take cognizance of the offence committed by a public servant punishable under the aforesaid Sections except with the previous sanction by the competent authority. The learned counsel submits that reading of Section 19 of the PC Act as a whole would make it clear that the sanction for prosecution has to be obtained with respect to a specific accused and only then the Court gets the competence to take cognizance of an offence punishable under Sections 7,10,11,13 and 15 of the PC Act. The learned counsel submits that as far as the general power of the Court under Section 190(1) of the Code is concerned, it is true that the Court is not bound to accept the cancellation/untraced report submitted by the investigating agency, and has the jurisdiction to take cognizance of the offence after disagreeing with the cancellation/untraced report submitted by the police, and summon the accused against whom he found sufficient material/evidence, but this general power of the Magistrate under the Code is not applicable in case of an offence alleged to have been committed under the PC Act, which is a special statute. Section 19 clearly debars the Court

from taking cognizance under the PC Act without there being any valid sanction by the competent authority. In support of his contention, learned counsel for the petitioner relied upon the decision of the Supreme Court in Dilawar Singh v. Parvinder Singh alias Iqbal Singh and another, (2006) 1 SCC (Cri) 727 and Ashok Mehta and another v. Ram Ashray Singh and others, 2006(2) RCR (Crl.) 329 (SC). The learned counsel submits that sub-section(3) and (4) of Section 19 of the PC Act will not dilute the pre-requisite of the valid sanction for taking cognizance of the offence. Learned counsel further submits that these provisions are attracted only to a case when after taking cognizance of the case some order has been passed during trial. But in a case where from the very beginning sanction has not been sought or if sought not granted, no Court can take cognizance of the alleged offence in absence of the prior sanction. The learned counsel submits that the case relied upon by the Special Court i.e. State by Police Inspector v. T.Venkatesh Murthy (supra) is not applicable to the facts and circumstances of this case. In that case the sanction was granted, but the accused wanted to set aside the order on the ground that there was irregularity in granting the sanction. Learned counsel submits that if the reasoning given by the Special Judge is accepted, then the provisions of Section 19 of the PC Act will become redundant. The learned counsel further submitted that in Crl.Revision No.2033 of 2005 (decided on January 25, 2006); Crl.Misc.No.6098-M of 2006 (decided on May 17, 2006) and Crl.Misc.No.6893-M of 2006 (decided on May 24, 2006); this Court has already taken the view that the Special Judge has no power to take cognizance of the offence under Section 190(1) of the Code while considering the untraced/cancellation report in absence of a valid sanction.

8. On the other hand, learned counsel for the respondent-State submitted that the general power of the Court under Section 190(1) for taking cognizance of the offence cannot be restricted only on the ground that Section 19 of the PC Act requires prior sanction for taking cognizance of the offence under the PC Act. He submits that a Court takes the cognizance of the offence and not of the offender. Once the Court from the material placed before it with the final report came to the conclusion that there is sufficient material/evidence against a particular accused, the Court has the power to take cognizance of the offence and summon the said accused. The learned counsel submits that if the Special Judge comes to the conclusion that the offence has been committed under the PC Act and there is sufficient material/evidence against a particular accused, then even under the PC Act no option is left with the Court except to take cognizance of the offence and summon the accused because the Special Judge is not competent to issue the direction to the investigating agency to obtain the appropriate sanction from the competent authority. In support of his contention, learned State counsel has relied upon the decision of the Supreme Court in Mansukhlal Vithaldas Chauhan Versus State of Gujarat, 1997(4) RCR (Crl.) 236 (SC) wherein it was held that while considering the final report submitted by the investigating agency, the Court is not competent to issue direction to the investigating agency to obtain the sanction from the competent authority or to direct the competent authority to grant sanction for prosecution of the accused. Learned State counsel further submitted that sub-sections (3) and (4) of Section 19 of the PC Act have brought material changes which have diluted the requirement of a valid sanction. He pointed out that sub-section(3)(a) of Section 19 of the PC

Act provides that no finding, sentence or order passed by the Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub-Section(1) unless in the opinion of the Court, a failure of justice has been occasioned thereby. The learned State counsel submits that the provisions of Section 465 of the Code are the *pari materia* provisions pertaining to the requirement of sanction under Section 197 of the Code. The learned counsel referred that in that Section the words "the absence of" are missing whereas in sub-Section(3) of Section 19 of the PC Act, the words "the absence of" are there. According to the learned counsel, this addition makes a difference. The intention of the legislation is that no finding, sentence or order passed by a Special Judge can be reversed or altered in appeal or revision on the ground of absence of sanction required under sub-Section(1) of Section 19 of the PC Act. In view of this change, learned counsel submits that even an order passed under Section 190(1) of the Code taking cognizance of the offence at the time of considering the final report by the police, cannot be set aside by the Court unless it comes to the conclusion that it has resulted in a failure of justice. Learned counsel submits that in a case where sanction was refused by the competent authority, the order of taking cognizance of the said offence cannot be set aside merely on the ground of absence of a valid sanction. Thus, according to the learned counsel, no interference is required in the impugned order.

9. After hearing the arguments of the learned counsel for the parties and considering the various submissions, I find merit in the contentions raised by the learned counsel for the petitioners.

Section 19(1) of the PC Act provides as under:-

> **"19.Previous sanction necessary for prosecution**.-(1) No court shall take cognizance of an offence punishable under sections 7,10,11,13 and 15 alleged to have been committed by a public servant, except with the previous sanction.-
>
> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
> (c) in the case of any other person, of the authority competent to remove him from his office."

10. According to this sub-Section, a valid sanction is a condition precedent or pre-requisite for taking cognizance of an offence and prosecution by a Special Judge for the offence committed under the PC Act. The sanction required under this Section must be previous sanction prior to the date of taking cognizance of the offence. The object of the legislation in providing for a sanction in respect of the offences under the PC Act is to afford a reasonable protection to the public servants in the discharge of their official duties and functions so that they continue performing their duties undeterred by vexatious and unnecessary prosecutions. The order of sanction is only an administrative act and not a quasi-judicial act. A valid sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions. Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty. The competent authority has to apply its own independent mind for

the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The sanctioning authority has the absolute discretion to grant or not to grant the sanction, but it is mandatory that no Court can take cognizance of the alleged offence without there being a valid sanction. The term `taking cognizance' has not been defined in the Code. This word has been used in the Code to indicate when a Magistrate or Judge should first take judicial notice of an offence. A Magistrate takes cognizance of an offence under sub-Section(1) of Section 190 of the Code (a) upon receiving a complaint or facts which constitute such an offence; (b) upon a police report of such facts; and (c) upon information received from any person other than the Police Officer or upon his own knowledge that such offence has been committed. If a Magistrate/Judge takes cognizance of an offence under Section 190(1) of the Code, he must apply his mind for the purpose of proceeding in a particular way as indicated in subsequent provisions.

11. It is well settled that when an untraced report or a cancellation report is submitted to the Court by the investigating agency, the Court is not bound to accept the said report. In such situation, three options are available to the Court: (a) he may accept the report and drop the proceedings; (b) he may disagree with the report and direct for further investigation in the case by the investigating agency; or (c) he may disagree with the report and take cognizance of the offence himself by taking the view that there is sufficient ground, material or evidence for proceeding further against the accused, and issue process to the accused. These are the general principles provided in the Code and are applicable in a case when there is no pre- requisite condition for taking cognizance of the offence. The PC Act is a Special Statute. Section 19 of the PC Act provides that no

Court shall take cognizance of an offence punishable under Sections 7,10,11,13 and 15 of the PC Act except with the previous sanction of the competent authority.

12. The Federal Court in **Basdeo Agarwalla v. Emperor**, AIR 1945 FC 16 has held that if a proceeding is initiated without sanction required under the Special Statute, the same would be null and void. In **Yusofalli Mulla Noorbhoy v. The King**, AIR 1949 PC 264, it was observed that a court cannot be competent to hear and determine a prosecution the institution of which, in the absence of a proper sanction, is prohibited by law. The Magistrate is no doubt competent to decide whether he had jurisdiction to entertain the prosecution and for that purpose to determine whether a valid sanction had been given, but as soon as he decided that no valid sanction had been given the court became incompetent to proceed with the matter. Their Lordships agree with the view expressed by the Federal Court in **Basdeo Agarwalla's** case (supra) that a prosecution launched without a valid sanction is a nullity. Similarly in **B.Saha v. M.S.Kochar** (1979) 4 SCC 177; **K.Kalimuthu v. State**, (2005) 4 SCC 512 and **State of Karnataka through CBI v. C.Nagarajaswamy**, (2006) 1 SCC (Cri) 47, it was held that grant of proper sanction by a competent authority is a *sine qua non.*

13. In Dilawar Singh v. Parvinder Singh alias Iqbal Singh and another (supra), a question came up for consideration before the Supreme Court whether in absence of a valid sanction by the competent authority, the Special Judge can summon the additional accused under Section 319 of the Code when no valid sanction was obtained or granted for prosecution of the accused under the PC Act. In that case, an FIR was lodged under the PC

Act against two officials. During the investigation, one of the accused, namely, Dilawar Singh, was found innocent. The investigating agency after obtaining the sanction against the other accused, filed the challan and kept accused Dilawar Singh in column No.2. During the trial, after the statement of the complainant, an application was filed by the prosecution to summon Dilawar Singh also under Section 319 Cr.P.C. as an additional accused. The Special Judge dismissed the said application on the ground that there is no sanction with regard to Dilawar Singh, therefore, the Court cannot take cognizance of the alleged offence against the said accused. The said order was set aside by the High Court. While setting side the order of the High Court, the Supreme Court has observed as under:-

> "8. The contention raised by learned counsel for the respondent that a court takes cognizance of an offence and not of an offender holds good when a Magistrate takes cognizance of an offence under Section 190 Cr.P.C. The observations made by this Court in **Raghubans Dubey v. State of Bihar,** AIR 1967 SC 1167 were also made in that context. The Prevention of Corruption Act is a special statute and as the preamble shows, this Act has been enacted to consolidate and amend the law relating the prevention of corruption and for matters connected therewith. Here, the principle expressed in the maximum *generalia specialibus non derogant* would apply which means that if a special provision has been made on a certain matter, that matter is excluded from the general provisions (See **Godde Venkateswara Rao v. Govt. of A.P**., AIR 1966 SC 828, **State of Bihar v. Dr.Yogendra Singh**, AIR 1982 SC 882 and

Maharashtra State Board of Secondary and Higher Education v. Paritosh Bhupeshkumar Sheth, AIR 1984 SC 1543). Therefore, the provisions of Section 19 of the Act will have an overriding effect over the general provisions contained in Section 190 or 319 Cr.P.C. A Special Judge while trying an offence under the Prevention of Corruption Act, 1988, cannot summon another person and proceed against him in the purported exercise of power under Section 319 Cr.P.C. if no sanctio has been granted by the appropriate authority for prosecution of such a person as the existence of a sanction is *sine qua non* for taking cognizance of the offence qua that person."

14. In my view, the aforesaid judgment of the Supreme Court gives the complete answer to the present controversy. It has been held that a prior sanction is *sine qua non* for taking cognizance of the offence under the provisions of PC Act. No cognizance against an accused can be taken even under Section 190 of the Code when there is no valid sanction against the said accused. This authority covers both the situations where the cancellation report is submitted by the investigating agency on the ground that during the investigation nothing was found against the accused, therefore, the investigating agency without seeking the sanction submitted the cancellation report. This authority also covers the situation where the investigating agency after the investigation came to the conclusion that there is sufficient material or evidence against the accused for presentation of challan against him and on that information applied for sanction before the sanctioning authority, who in its discretion after considering the

material declined to grant the sanction, thereafter, the investigating agency submitted the untraced report. In my opinion, whether the investigating agency submitted the cancellation report or the untraced report, as indicated above, it will make no difference and in both the situations, the Special Judge has no jurisdiction to take cognizance of the offence while not agreeing with the report submitted by the investigating agency on the ground that there is sufficient material/evidence against the accused.

15. In State v. Raj Kumar Jain, (1998) 6 SCC 551, the orders of the Special Judge and the High Court came up for consideration where the CBI was directed to obtain a sanction from the competent authority before approaching the Court for accepting the final report submitted by the investigating agency under Section 173(2) of the Code for discharge of the accused. In the said case, it was held that while considering the report submitted by the investigating agency for discharge of the accused, the Court can direct for further investigation if it is found that the information of the Investigating Officer is not based on full and complete investigation. However the Court has no power to pass an order requiring the investigating agency to obtain the sanction from the competent authority before approaching the Court for acceptance of the report. It was held that the investigating agency is under no obligation to apply and obtain the sanction from the competent authority when it found that no case has been made out against the accused. For filing a cancellation report or untraced report, no sanction is required. The sanction is required only if the investigating agency decides to file challan against the accused. It is well settled that a Court cannot take cognizance of the offence under the PC Act without there being any sanction by the competent authority.

16. In Ashok Mehta's case (supra) a complaint was filed for prosecution of the accused under Sections 467,468, 471 read with Section 120-B IPC and Sections 13(2) and 13(1)(d) of the PC Act. The Special Judge ordered that the said complaint will be considered for taking cognizance only after sanction is obtained. The said order was set aside by the High Court while observing that the Special Judge can take cognizance of the complaint and proceed with the trial even without obtaining prior sanction as the same can be obtained later on. While setting aside the judgment of the High Court, the Supreme Court has observed that the reasoning given by the High Court was not only fallacious, but wholly unknown to law and it was not at all justified in interfering with the order passed by the trial Court. This judgment also clearly indicates that even on a complaint, no cognizance can be taken by the Special Judge without there being a previous sanction against the alleged accused.

17. The contention raised by the counsel for the respondent-State that in view of sub-Sections(3) and (4) of Section 19 of the PC Act, the order of taking cognizance passed by the Special Judge cannot be set aside, in my opinion, is not acceptable. These sub-sections do not override or abrogate the provisions of sub-Section(1) of Section 19 of the PC Act. In my opinion, these provisions also not dilute the bar created by sub-Section (1) for taking cognizance of the offence without valid sanction from the competent authority. In my opinion, these provisions are applicable to a finding, sentence or order passed by the Special Judge during the trial after taking cognizance of the offence. These provisions are not applicable at the stage of taking cognizance of the offence. If the said contention is accepted, then the provisions of sub-Section(1) of Section 19 of the PC Act will

become redundant, which is not the intention of the legislation. Such an interpretation will not only make sub-Section(1) redundant but will also defeat the very purpose for which Section 19 of the PC Act was enacted. Thus, these provisions were added in sub-Sections (3) and (4) with the object that merely on the technicalities pertaining to some omissions or irregularities in grant of sanction, the conviction or sentence should not be set aside in appeal. In my opinion, the judgment of State by Police Inspector v. T.Venkatesh Murthy (supra) relied upon by the State counsel in support of his contention is not applicable in the present situation. The said case was not a case pertaining to the stage where the Court took cognizance without there being any sanction at all. In that case, the sanction was obtained, but the contention was raised that the same was not validly obtained.

18. In view of the aforesaid discussion, these petitions are allowed and the impugned orders passed by the Special Judge are set aside and the petitioners are ordered to be discharged for want of sanction.

September , 2006 **(SATISH KUMAR MITTAL)**
vkg **JUDGE**

Refer to Reporter.